

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 95

SENATE BILL 1171

AN ACT

AMENDING SECTION 42-2059, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 7; RELATING TO MANAGED AUDIT AGREEMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 42-2059, Arizona Revised Statutes, is amended to read:

42-2059. No additional audits or proposed assessments; exceptions

A. When the department completes an audit OR THE FINDINGS OF A MANAGED AUDIT ARE ACCEPTED BY THE DIRECTOR OR APPROVED ON APPEAL and a deficiency has been completely determined under section 42-1108 or chapter 1, article 6 of this title, the taxpayer's liability for the particular tax for the period subjected to the audit is fixed and determined, and no additional audit may be conducted except under the following circumstances:

1. If a taxpayer files a claim for refund under section 42-1251, subsection B or any other provision authorizing a claim for refund. Any departmental audit of the claim is limited to the issues presented on the claim for refund.

2. Changes or corrections required to be reported to the department by section 43-327. The department may audit any such reports or any periods for which a report was required notwithstanding this section and may determine a tax deficiency or a refund.

3. An audit of state transaction privilege or use tax does not preclude a subsequent audit for a city or town. An audit of transaction privilege or use tax for a city or town does not preclude a subsequent audit for this state.

4. If the taxpayer failed to disclose material information during the audit, or has falsified books or records or otherwise engaged in an action that prevented the department from conducting an accurate audit, the applicability of this subsection may be part of a subsequent protest and may be contested by the taxpayer pursuant to chapter 1, article 6 of this title.

5. IF A MANAGED AUDIT IS COMPLETED UNDER THE TERMS OF A LIMITED MANAGED AUDIT AGREEMENT, THE DEPARTMENT MAY AUDIT THE ISSUES NOT COVERED BY THE LIMITED MANAGED AUDIT AGREEMENT WITHIN THE STATUTE OF LIMITATIONS PRESCRIBED BY SECTION 42-1104.

B. If the department issues a notice of proposed assessment of taxes imposed by chapter 5, article 1 or 4 of this title or title 43, chapter 10, the department may not increase the amount of the proposed assessment except in one or more of the following circumstances:

1. The taxpayer has made a material misrepresentation of facts.

2. The taxpayer has failed to disclose a material fact to the auditor.

3. The department has requested information and the taxpayer fails to provide that information to the department.

4. After issuing the notice of proposed assessment but before the assessment becomes final the tax court, court of appeals or supreme court issues a decision, the application of which causes the tax initially proposed to increase.

1 C. Subsection B of this section does not apply to changes or
2 corrections that are required to be reported to the department by section
3 43-327.

4 Sec. 2. Title 42, chapter 2, Arizona Revised Statutes, is amended by
5 adding article 7, to read:

6 ARTICLE 7. MANAGED AUDIT AGREEMENTS

7 42-2301. Definitions

8 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "LIMITED MANAGED AUDIT AGREEMENT" MEANS A MANAGED AUDIT AGREEMENT
10 THAT IS LIMITED IN SCOPE TO CERTAIN PERIODS, ACTIVITIES, LINES OF BUSINESS,
11 GEOGRAPHIC AREAS OR TRANSACTIONS, INCLUDING TAX ON THE RECEIPTS OF CERTAIN
12 SALES, THE VALUE OF CERTAIN ASSETS, THE VALUE OF CERTAIN ITEMS OR SERVICES
13 AND OTHER CATEGORIES SPECIFIED IN THE AGREEMENT.

14 2. "MANAGED AUDIT" MEANS A REVIEW AND ANALYSIS BY A TAXPAYER OR THE
15 TAXPAYER'S AUTHORIZED REPRESENTATIVE OF THE INVOICES, CHECKS, ACCOUNTING
16 RECORDS OR OTHER DOCUMENTS AND INFORMATION TO DETERMINE A TAXPAYER'S
17 LIABILITY UNDER CHAPTERS 3, 5 OR 6 OF THIS TITLE OR TITLE 43, CHAPTER 11.

18 3. "MANAGED AUDIT AGREEMENT" MEANS A WRITTEN AGREEMENT BETWEEN THE
19 DIRECTOR AND TAXPAYER THAT CONSISTS OF AN AUDIT PLAN THAT REQUIRES THE
20 TAXPAYER TO REVIEW SELECTED REVENUE, EXPENSE AND FACT RECORDS TO DETERMINE
21 THE PROPER FILING METHOD AND TO CALCULATE THE TAXPAYER'S LIABILITY UNDER
22 CHAPTER 3, 5 OR 6 OF THIS TITLE OR TITLE 43, CHAPTER 11. MANAGED AUDIT
23 AGREEMENT INCLUDES A LIMITED MANAGED AUDIT AGREEMENT.

24 4. "TAXPAYER'S AUTHORIZED REPRESENTATIVE" MEANS A REPRESENTATIVE WHO
25 IS SELECTED BY THE TAXPAYER TO CONDUCT THE MANAGED AUDIT AND WHO IS APPROVED
26 BY THE DIRECTOR.

27 42-2302. Managed audit agreements

28 A. ON APPLICATION BY A TAXPAYER, THE DIRECTOR, IN THE DIRECTOR'S SOLE
29 DISCRETION, MAY AGREE TO A MANAGED AUDIT WITH THE TAXPAYER. THE MANAGED
30 AUDIT AGREEMENT SHALL:

31 1. BE SIGNED BY THE TAXPAYER AND THE DIRECTOR.

32 2. CONTAIN A DECLARATION BY THE TAXPAYER THAT ALL STATEMENTS OF FACT
33 IN THE TAXPAYER'S APPLICATION AND AGREEMENT ARE TRUE AND CORRECT FOR EVERY
34 MATERIAL MATTER.

35 3. SPECIFY THE TYPES OF TAXES, THE REPORTING PERIODS, ANY LIMITATIONS
36 ON THE SCOPE OF THE MANAGED AUDIT, THE NAME OF THE TAXPAYER'S AUTHORIZED
37 REPRESENTATIVE, IF ANY, AND THE AUDIT PLAN, INCLUDING THE PROCEDURES TO
38 PERFORM THE MANAGED AUDIT.

39 B. THE MANAGED AUDIT AGREEMENT MAY BE MODIFIED IN WRITING IF THE
40 AGREEMENT IS SIGNED BY THE TAXPAYER AND DIRECTOR AND THE AGREEMENT COMPLIES
41 WITH SUBSECTION A OF THIS SECTION.

42 C. THE DIRECTOR MAY CONSIDER ALL RELEVANT FACTORS WHEN DETERMINING
43 WHETHER TO AGREE TO A MANAGED AUDIT AGREEMENT, INCLUDING:

44 1. THE TAXPAYER'S HISTORY OF TAX COMPLIANCE.

1 2. THE AMOUNT OF THE TAXPAYER'S TIME AND QUALITY OF RESOURCES THAT THE
2 TAXPAYER CAN DEDICATE TO THE AUDIT.

3 3. THE EXTENT AND AVAILABILITY OF THE TAXPAYER'S RECORDS.

4 4. THE NATURE AND SCOPE OF ANY LEGAL DISPUTE WITH THE DEPARTMENT AND
5 ITS RELEVANCE TO THE MANAGED AUDIT PROPOSAL.

6 D. A MANAGED AUDIT AGREEMENT FOR TAXES UNDER CHAPTER 5 OF THIS TITLE
7 SHALL INCLUDE COUNTY EXCISE TAXES. A TAXPAYER MAY REQUEST THAT THE MANAGED
8 AUDIT AGREEMENT INCLUDE CITY AND TOWN EXCISE TAXES AND THE DEPARTMENT SHALL
9 NOTIFY THE CITIES OR TOWNS IN WHICH THE TAXPAYER CONDUCTS BUSINESS. IF A
10 CITY OR TOWN DOES NOT AGREE TO PARTICIPATE IN THE MANAGED AUDIT AGREEMENT,
11 THE CITY OR TOWN SHALL NOT CONDUCT AN AUDIT OF THE TAXPAYER FOR FORTY-TWO
12 MONTHS FROM THE END OF THE LAST TAX PERIOD THAT IS COVERED BY THE MANAGED
13 AUDIT AGREEMENT UNLESS AN EXCEPTION APPLIES PURSUANT TO SECTION 42-2059.

14 42-2303. Managed audit operations; appeal

15 A. THE TAXPAYER OR THE TAXPAYER'S REPRESENTATIVE SHALL FURNISH WRITTEN
16 FINDINGS OF THE MANAGED AUDIT TO THE DIRECTOR.

17 B. THE DIRECTOR SHALL REVIEW THE WRITTEN FINDINGS AND MAY EXAMINE
18 RECORDS AND PERFORM OTHER REVIEWS THAT THE DIRECTOR DEEMS NECESSARY TO VERIFY
19 THAT THE MANAGED AUDIT SUBSTANTIALLY CONFORMED TO THE TERMS OF THE MANAGED
20 AUDIT AGREEMENT. AFTER PERFORMING THE REVIEW UNDER THIS SUBSECTION, THE
21 DIRECTOR SHALL ACCEPT OR REJECT THE FINDINGS OF THE MANAGED AUDIT AND ISSUE A
22 NOTICE OF DETERMINATION.

23 C. IF THE DIRECTOR ACCEPTS THE MANAGED AUDIT FINDINGS, THE DIRECTOR
24 SHALL ASSESS ANY DEFICIENCY OR ISSUE ANY REFUND THAT RESULTS FROM THE MANAGED
25 AUDIT PURSUANT TO SECTION 42-2304 IN THE MANNER DESCRIBED BY SECTIONS 42-1108
26 AND 42-1118.

27 D. IF THE MANAGED AUDIT RESULTS IN A NOTICE OF DETERMINATION THAT THE
28 TAXPAYER DISPUTES OR IF THE DIRECTOR REJECTS THE FINDINGS OF THE MANAGED
29 AUDIT, THE TAXPAYER MAY APPEAL THE NOTICE OF DETERMINATION. THE TAXPAYER HAS
30 THE SAME APPEAL RIGHTS UNDER THIS SECTION AS IF THE DEPARTMENT CONDUCTED THE
31 AUDIT.

32 E. THE TAXPAYER AND DIRECTOR MAY AGREE TO A CLOSING AGREEMENT UNDER
33 SECTION 42-1113 TO RESOLVE ANY ISSUES OR AMOUNTS THAT ARE DISPUTED.

34 42-2304. Interest and penalties; refunds

35 A. NOTWITHSTANDING SECTION 42-1125, THE DIRECTOR SHALL NOT ASSESS ANY
36 PENALTIES UNLESS THE MANAGED AUDIT DISCLOSES THAT THE TAXPAYER COMMITTED
37 FRAUD OR WILFUL TAX EVASION OR THAT THE TAXPAYER COLLECTED MONIES THAT WERE
38 REPRESENTED AS TAX BUT WERE NOT REMITTED TO THE STATE.

39 B. NOTWITHSTANDING SECTION 42-1123, THE DIRECTOR SHALL NOT ASSESS
40 INTEREST IF THE MANAGED AUDIT RESULTS IN A DEFICIENCY, IF THE TAXPAYER PAYS
41 THE TAX WITHIN FORTY-FIVE DAYS OF RECEIPT OF THE NOTICE OF DETERMINATION AND
42 THE TAXPAYER DID NOT COMMIT THE ACTIVITIES DESCRIBED IN SUBSECTION A OF THIS
43 SECTION. IF THE ENTIRE ASSESSMENT IS PAID AFTER FORTY-FIVE DAYS OF THE
44 TAXPAYER'S DATE OF RECEIPT OF THE NOTICE OF DETERMINATION, THE TAXPAYER SHALL
45 PAY INTEREST PURSUANT TO SECTION 42-1123.

1 C. IF THE FINDINGS OF A MANAGED AUDIT DETERMINE THAT A REFUND IS DUE
2 TO THE TAXPAYER, THE DEPARTMENT SHALL NOT PAY INTEREST TO THE TAXPAYER IF THE
3 REFUND IS ISSUED WITHIN FORTY-FIVE DAYS OF THE TAXPAYER'S DATE OF RECEIPT OF
4 THE NOTICE OF DETERMINATION. IF THE REFUND IS PAID AFTER FORTY-FIVE DAYS OF
5 THE TAXPAYER'S DATE OF RECEIPT OF THE NOTICE OF DETERMINATION, THE DEPARTMENT
6 SHALL PAY INTEREST PURSUANT TO SECTION 42-1123.

7 D. FOR THE PURPOSES OF SUBSECTIONS B AND C OF THIS SECTION, 'NOTICE OF
8 DETERMINATION' MEANS EITHER:

9 1. THE DIRECTOR'S NOTICE OF DETERMINATION, IF NOT APPEALED.

10 2. THE FINAL DECISION AT THE HIGHEST LEVEL OF APPEAL TO WHICH THE
11 MATTER IS TAKEN, IF A NOTICE OF DETERMINATION OR REJECTION IS APPEALED.

12 Sec. 3. Applicability

13 Except for the taxes imposed under title 43, chapter 11, Arizona
14 Revised Statutes, this act applies for managed audit applications submitted
15 to the director from and after December 31, 2005. For the taxes imposed
16 under title 43, chapter 11, Arizona Revised Statutes, this act applies for
17 managed audit applications submitted to the director from and after
18 December 31, 2006.

APPROVED BY THE GOVERNOR APRIL 18, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2005.

Passed the House April 4, 2005

by the following vote: 54 Ayes,

1 Nays, 5 Not Voting

[Signature]
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate February 15, 2005

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

[Signature]
President of the Senate

Lena Scott
Assistant Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

S.B. 1171

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate April 12, 2005

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Ken Bennett
President of the Senate
Charmaine Ballington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

12th day of April, 2005

at 4:20 o'clock P. M.

Wendy Ybarra
Secretary to the Governor

Approved this 18 day of

April, 2005,

at 1:45 o'clock P. M.

Jan Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 18 day of April, 2005

at 4:42 o'clock P. M.

Janice K. Brewer
Secretary of State